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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

J. FINLEY,

Plaintiff,

v.

ERIC MICHAEL GARCETTI, *et al.*,

Defendants.

2:21-cv-06003-DKC

**NOTICE OF MOTION AND MOTION
(1) FOR DECLARATORY RELIEF
AND (2) PRELIMINARY
INJUNCTION, DECLARING THAT
DEFENDANTS' PLACEMENT AND
ENFORCEMENT OF NO PARKING
SIGNS IS UNCONSTITUTIONAL**

Date: September 13, 2021

Time: 8:30 a.m.

Place: Courtroom 9D, Santa Ana

Judge David Ormon Carter

PLEASE TAKE NOTICE that plaintiff moves the court to declare the unconstitutionality, under the United States Constitution, of defendants' placement and enforcement of no parking signs that prohibit parking between the hours of 2:00 a.m. and 6:00 a.m. on public streets in the City of Los Angeles, that oral argument will be heard as set forth above, and that the instant motion is based on

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Cases

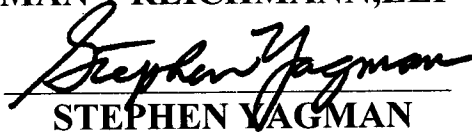
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1 the ground that the signs' placement and enforcement is violative of both the
2 Fourteenth Amendment and the Eighth Amendment to the United States
3 Constitution.

4 The L.R. 7-3 meet and confer was held on or about July 27, 2021 by
5 telephone, with Scott Marcus, who is the Chief of the Civil Litigation Branch of
6 the Los Angeles City Attorney's office.

7
8 **YAGMAN + REICHMANN,LLP**

9 By:


STEPHEN YAGMAN

10
11 **YAGMAN + REICHMANN,LLP**

12 By:

/s/ Joseph Reichmann
JOSEPH REICHMANN

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff submits this memorandum of points and authorities (and declaration, submitted concurrently herewith) in support of plaintiff's motion for declaratory relief and the issuance of a preliminary injunction.

I. INTRODUCTION

Defendants have caused to be placed on public streets around the City of Los Angeles, including the streets in Venice, no parking signs that prohibit parking RVs, campers, trailers, and the like, that are more than seven feet in height or 22 feet in length, on penalty of being fined or the vehicles being towed away and impounded. *See* Exhibit 1 to complaint, Doc. 1, Ordinance 80.69.4, which provides as follows:

City of Los Angeles ordinance § 80.69.4, whose enforcement is the basis for the claims made in this action, provides as follows:

SEC. 80.69.4. PARKING OF OVERSIZE VEHICLES. (Amended by Ord. No. 182,741, Eff. 11/11/13.)

(a) No person shall stop, stand or park, when authorized signs are in place giving notice of the restriction, any oversize vehicle, defined as a *motor vehicle in excess of 22 feet in length or over 84 inches in height, between 2:00 a.m. and 6:00 a.m.* The registered owner of the oversize vehicle or other person having control of the oversize vehicle shall also be in violation of this section if he or she has knowledge that the oversize vehicle had been so parked and the person parking had the express or implied permission to operate the oversize vehicle.

(b) *Oversize vehicle restricted areas or streets may be established in either of the following manners:*

(1) *The Council may authorize, by resolution, the streets upon which the parking of oversize vehicles shall be restricted between 2:00 a.m. and 6:00 a.m., except for those oversize vehicles displaying a valid permit issued pursuant to the provisions of Subsection (c) of this section. Upon Council action designating streets with oversize vehicles parking restrictions, the*

1 Department of Transportation shall cause appropriate signs to be erected in
2 those streets, indicating the parking limitation prominently on the sign and
3 stating that motor vehicles with valid permits shall be exempt from the
4 restrictions.

5 (2) A Councilmember representing the district in which fewer than six
6 street segments are impacted by the unrestricted parking of oversize vehicles
7 may request the Department of Transportation to investigate and make a
8 determination whether or not the parking of oversize vehicles on those street
9 segments between 2:00 a.m. and 6:00 a.m. is adversely impacting the
10 visibility of oncoming traffic, creating constrictions in the traveled way, or
11 substantially reducing the availability of parking for residents and
12 businesses. For the purpose of this section, a street segment consists of both
13 sides of a street between two adjacent intersecting streets. To make this
14 request, the Councilmember shall send a letter to the Department of
15 Transportation identifying the street segments to be included in the restricted
16 area, the reasons for the request, and verifying receipt of petitions showing
17 support for the restriction by a substantial number of affected community
18 residents.

19 Upon receiving a written request from a Councilmember pursuant to this
20 subdivision, the Department of Transportation shall conduct an investigation
21 to determine whether or not the parking of oversize vehicles between 2:00
22 a.m. and 6:00 a.m. on the designated street segments is adversely impacting
23 the visibility of oncoming traffic, creating constrictions in the traveled way,
24 or substantially reducing the availability of parking for residents and
25 businesses. In making its determination, the Department shall consider all
26 relevant factors, including without limitation, the location of driveways
27 relative to parked oversize vehicles, the width of oversize vehicles when
28 compared to other parked vehicles, the existing availability of parking, the
impact the oversize vehicles are having on parking availability for residents
and businesses, the effectiveness of restricting oversize vehicle parking in
alleviating any adverse impact on the visibility of oncoming traffic,
constrictions of the traveled way and reduced parking supply, and whether
signs may be erected on the street segments in a manner that provides
adequate notice of the restriction. The Department of Transportation shall
report the results of its investigation and determination to the City Council.
The City Council may, by resolution authorize the street segments upon
which the parking of oversize vehicles shall be restricted between 2:00 a.m.
and 6:00 a.m., except for those oversize vehicles displaying a valid permit

1 issued pursuant to the provisions of Subsection (c) of this section. Upon
 2 Council action designating street segments with oversize vehicle parking
 3 restrictions, the Department of Transportation shall cause appropriate signs
 4 to be erected in those street segments, indicating the parking limitation
 5 prominently on the sign and stating that motor vehicles with valid permits
 shall be exempt from the restrictions.

6 (c) Notwithstanding the above, the parking of oversize vehicles, as
 7 defined in Subsection (a) of this section, shall be allowed in areas
 8 established pursuant to the provisions of Subsection (b) of this section,
 9 provided that the oversize vehicle properly displays a valid permit that was
 10 issued in advance by the Department of Transportation. The permit shall be
 11 issued for a fee of \$10.00 per day and for a period not to exceed three
 12 consecutive days. The use of this permit shall be limited to the purchasing
 13 resident's street segment, or adjacent street segment if authorized by the
 14 Department. A permit issued pursuant to this subsection shall not guarantee
 or reserve to the holder an on-street parking space.

15 (Emphases added.)

16 The signs provided for by the ordinance very obviously and unabashedly
 17 target the poor, un-housed population¹ who live in these vehicles, by preventing

18 ¹ Thirty-seven years ago, the Court had this to say about homelessness:

19
 20 Estimates on the number of homeless persons in the United States range
 21 from two to three million. See Brief for National Coalition for the Homeless
 22 as Amicus Curiae 3. Though numerically significant, the homeless are
 23 politically powerless inasmuch as they lack the financial resources necessary
 24 to obtain access to many of the most effective means of persuasion.
 25 Moreover, homeless persons are likely to be denied access to the vote since
 26 the lack of a mailing address or other proof of residence within a State
 27 disqualifies an otherwise eligible citizen from registering to vote. *Id.*, at 5.
 28 The detrimental effects of homelessness are manifold and include psychic
 trauma, circulatory difficulties, infections that refuse to heal, lice
 infestations, and hypothermia. *Id.*, at 14–15. In the extreme, exposure to the
 elements can lead to death; over the 1983 Christmas weekend in New York
 City, 14 homeless persons perished from the cold. See *N.Y. Times*, Dec. 27,
 1983, p. A1., col. 1.

1 them from staying overnight in the posted areas, or from sleeping in their vehicles
2 between the hours of 2:00 a.m. and 6:00 a.m.

3 The signs specifically target the un-housed and the poor, and prevent them
4 from having access to public amenities², such as showers in which to bathe and
5 public toilets. Declaration of C. Finley, submitted herewith ("Finley Decl.").
6 There is no reason at all, much less any legitimate reason, for the placement and
7 threatened enforcement of these signs. The reason is to restrict the locations at
8 which un-housed persons freely may be, and this is unconstitutional, both on its
9 face and as applied.

10 II. 11 DEFENDANTS' CONDUCT IS UNCONSTITUTIONAL.

12 Like *Les Misérables*, in 1862, in which Victor Hugo examined the nature of
13 law and grace, and urban design, so too does this action address the fate of the poor

14
15
16 *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 304 n. 4 (1984).

17 This condition was exacerbated when, in 1981, President Reagan repealed
18 President Carter's Mental Health Systems Act with the Omnibus Budget
19 Reconciliation Act. This pushed the responsibility of mentally ill patients back to
20 the states, and created block grants for the states, but federal spending on mental
21 illness declined. A time-line is found at
22 [https://www.kqed.org/news/11209.729/did-the-emptying-of-mental-hospitals-](https://www.kqed.org/news/11209.729/did-the-emptying-of-mental-hospitals-contribute-to-homelessness-here)
23 [contribute-to-homelessness-here](https://www.kqed.org/news/11209.729/did-the-emptying-of-mental-hospitals-contribute-to-homelessness-here). Basically, President Kennedy signed the
24 Community Mental Health Act so that the federal government would fund mental
25 hospitals instead of state governments, and when President Reagan ended federal
funding, states (who have very constrained budgets and who must balance their
budgets) never went back to funding fully mental hospitals. *See id.*, Jessica
Placzek, Dec. 8, 2016.

26 ² In 1867, 154 years ago, Karl Marx, in his seminal *Das Kapital*, posited that there
27 were three stages of economic development, slavery, feudalism, capitalism,
28 socialism, and communism, and that in "late-stage" capitalism, as now exists in the
United States, the chasm between the rich and the poor so greatly would widen that
the rich would seek to banish and subjugate the poor.

1 and un-housed in urban Los Angeles. In 2014, the Ninth Circuit's holdings in
 2 *Desertrain v. City of Los Angeles*, 754 F.3d 1147 (9th Cir. 2014), should have put
 3 paid to defendants' challenged conduct in the instant matter, but it didn't.
 4 Defendants are local politicians who have no, or very little, regard for the poor and
 5 down-trodden, and instead seek to appease those who most likely are going to vote,
 6 hopefully for them. Defendants seek to appease the rich and comfortable among
 7 us, and who don't want to be bothered looking at those who are less fortunate.
 8 They want them just to disappear, to go away. They want to negatively eugenicize
 9 their urban scape, to clear it of the unsightly. This court must not let them get
 10 away with that.

11 In *Desertrain*, the Ninth Circuit told the City of Los Angeles to stop
 12 demonizing and punishing the poor, and held as follows, but to no avail:

14 This 42 U.S.C. § 1983 case concerns the constitutionality of Los Angeles
 15 Municipal Code Section 85.02, which ***prohibits use of a vehicle "as living***
 16 ***quarters either overnight, day-by-day, or otherwise."*** ***Plaintiffs include***
 17 ***four homeless individuals who parked their vehicles in the Venice area of***
 18 ***Los Angeles*** and were cited and arrested for violating Section 85.02.
Defendants are the City of Los Angeles and individual LAPD officers.

19 ...
 [The subject ordinance states that ***N/o person shall use a vehicle parked or***
 20 ***standing upon any City street***, or upon any parking lot owned by the City of
 21 Los Angeles and under the control of the City of Los Angeles or under
 22 control of the Los Angeles County Department of Beaches and Harbors, ***as***
living quarters either overnight, day-by-day, or otherwise.

23 On September 23, 2010, Los Angeles officials held a "Town Hall on
 24 Homelessness" ***to address complaints of homeless individuals with vehicles***
 25 ***living on local streets in Venice.***

26 ...
 Beginning in late 2010, the Task Force began enforcing Section 85.02
 27 ***against homeless individuals.*** Four such homeless individuals are Plaintiffs
 28 in this case

...
Section 85.02 promotes arbitrary enforcement that targets the homeless.

1 A statute is also unconstitutionally vague if it encourages arbitrary or
 2 discriminatory enforcement. *See Papachristou*, 405 U.S. at 162, 92 S.Ct.
 3 839. If a statute provides “no standards governing the exercise of ...
 4 discretion,” it becomes “***a convenient tool for harsh and discriminatory***
 5 ***enforcement*** by local prosecuting officials, ***against particular groups***
 6 ***deemed to merit their displeasure.***” *Id.* at 170, 92 S.Ct. 839 (internal
 7 quotation marks omitted).

8 [The ordinance] appears to be ***applied only to the homeless***[,]³ . . .
 9 to enable men to be caught who are vaguely undesirable in the eyes of the
 10 police and prosecution

11 The [Supreme] Court [in *Papachristou v. City of Jacksonville*, 405 U.S. 156
 12 (1972)] viewed the ordinance in its historical context as the descendant of
 13 English feudal poor laws ***designed to prevent the physical movement and***
 14 ***economic ascension of the lower class.*** *Id.* at 161–62, 92 S.Ct. 839. In
 15 America, such laws had been used to “***roundup ... so-called undesireables,***”
 16 and resulted “in ***a regime in which the poor and the unpopular [we]re***
 17 ***permitted to stand on a public sidewalk ... only at the whim of any police***
 18 ***officer.***” *Id.* at 170, 171, 92 S.Ct. 839 (internal quotation marks omitted).
 19 The Court concluded that “the rule of law implies equality and justice in its
 20 application. Vagrancy laws ... teach that the scales of justice are so tipped
 21 that even-handed administration of the law is not possible. ***The rule of law***
 22 ***[must be], evenly applied*** to minorities as well as majorities, ***to the poor*** as
 23 well as the rich, [and] is the great mucilage that holds society
 24 together.” *Id.* at 171, 92 S.Ct. 839.

25
 26 [The manner in which the City of Los Angeles behaved is] incompatible
 27 with the concept of an even-handed administration of the law to the poor and
 28 to the rich that is fundamental to a democratic society.

29
 30 In sum, Section 85.02 has ***paved the way for law enforcement to target the***
 31 ***homeless*** and is therefore unconstitutionally vague.

32 ³ Here, this precisely is what is going on: the subject no parking signs are applied
 33 only to the un-housed, to prevent only them from sleeping in their vehicles
 34 between 2:00 a.m. and 6:00 a.m. Yet, seven years ago, the City was told to cut this
 35 out, but to no avail.

1 [The Section] opens the door to discriminatory enforcement against the
2 homeless and the poor.

3 ***For many homeless persons, their automobile may be their last major***
4 ***possession***—the means by which they can look for work and seek social
5 services. The City of Los Angeles has many options at its disposal to
6 alleviate ***the plight and suffering of its homeless citizens. Selectively***
7 ***preventing the homeless and the poor from using their vehicles for***
8 ***activities many other citizens also conduct in their cars should not be one***
9 ***of those options.***

10 754 F.3d at 1149-58 (emphases added). Yet, here we are, again: new faces, same
11 old, cacophonous song.

12 This long has been condemned by both the Supreme Court and the Ninth
13 Circuit.

14 In his dissent in *James v. Valtierra*, 402 U.S. 137, 144-45 (1971), Justice
15 Marshall, joined by Justices Brennan and Blackmun, stated that "[i]t [the law in
16 issue] is an explicit classification on the basis of poverty--a suspect classification
17 which demands exacting judicial scrutiny[,] . . . [because it] may affect the poor
18 more harshly than it does the rich." (Citing *Douglas v. California*, 372 U.S. 353,
19 361 (1973) (Harlan, J., dissenting). In as many words, majority dispositions of the
20 Court held the same thing. See *McDonald v. Bd. of Election Commissioners*, 394
21 U.S. 802, 807 (1969) ("a careful examination on our part is especially warranted
22 where lines are drawn on the basis of wealth"); *Harper v. Va. Bd. of Elections*, 383
23 U.S. 663, 667 (1966) ("We conclude that a State violates the Equal Protection
24 Clause of the Fourteenth Amendment whenever it makes . . . affluence . . . a[] . . .
25 standard."); *Douglas v. California*, 372 U.S. 353, 358 (1973) ("equality [is]
26 demanded by the Fourteenth Amendment where the rich man . . . enjoys the benefit
27 . . . while the indigent . . . is forced to shift for himself.").

28 There is the same right under the Eighth Amendment. In *Martin v. City of*
Boise, 920 F.3d 584, 604 (9th Cir.), *amended on denial of reh'g and reh'g en banc*,

1 *cert. denied sub nom. City of Boise, Idaho v. Martin*, 140 S.Ct. 674 (2019), the
2 court held that:

3 "so long as there is a greater number of homeless individuals in Los Angeles
4 than the number of available beds [in shelters]" for the homeless, Los
5 Angeles could not enforce a similar ordinance against homeless individuals .
6 We agree with *Jone's* reasoning and central conclusion . . . and so hold
7 that an ordinance violates the Eighth Amendment insofar as it imposes
8 criminal sanctions against homeless individuals for sleeping outdoors, on
9 public property, when no alternative shelter is available to them.

10 (Citing with approval and adopting the reasons set forth in *Jones v. City of Los*
11 *Angeles*, 444 F.3d 118 (9th Cir. 2006), *vacated*, 505 F.3d 1006 (2007)). In *Martin*,
12 although *Jones* too-cleverly-by-half had been settled by the City of Los Angeles
13 having paid out a small king's ransom in attorneys' fees to plaintiffs' counsel,
14 lawyers with the ACLU Foundation of Southern California, in order to try to
15 prevent it from becoming binding precedent, still it ended up becoming binding
16 precedent, especially on the City, when the court in *Martin* "agree[d] with *Jones's*
17 reasoning and central conclusion." *Martin* brought *Jones* back from the graveyard
18 of cases that over-reaching parties sought to bury by settling and then getting a
19 court to vacate.

20 Plaintiff both has stated and sustained both Fourteenth Amendment and
21 Eighth Amendment claims, and there is a likelihood of plaintiff succeeding on the
22 merits. *See infra*.

23 **III.**

24 **BOTH DECLARATORY AND INJUNCTIVE RELIEF ARE WARRANTED.**

25 **A. DECLARATORY RELIEF**

26 "In a case of actual controversy within its jurisdiction, . . . any court of the
27 United States, upon the filing of an appropriate pleading, may declare the rights
28 and other legal relations of any interested party[,] . . . [and a]ny such declaration
shall have the force and effect of a final judgment or decree and shall be
reviewable as such." 28 U.S.C. § 2201. Moreover, "[f]urther necessary or proper

1 relief based on a declaratory judgment or decree may be granted after reasonable
2 notice and hearing, against any adverse party whose rights have been determined
3 by such judgment." 28 U.S.C. § 2202.

4 Here, based on the foregoing, plaintiff is entitled to the declaratory relief that
5 the subject ordinance is unconstitutional both on its face and as applied, and to
6 further injunctive relief. *See infra*.

7 **B. PRELIMINARY INJUNCTIVE RELIEF**

8 "A plaintiff seeking a preliminary injunction must establish that he [or she]
9 is likely to succeed on the merits, that he [or she] is likely to suffer irreparable
10 harm in the absence of preliminary relief, that the balance of equities tips in his [or
11 her] favor, and that an injunction is in the public interest." *Winter v. Natural*
12 *Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008) (citations omitted). *See*
13 *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008); *Amoco Production Co. v. Gambell*,
14 480 U.S. 531, 542 (1987); *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311-12
15 (1982). Plaintiff is likely to succeed on the merits, *see supra*, plaintiff is likely to
16 suffer irreparable harm in that plaintiff will have been deprived of plaintiff's right
17 to park her RV in Venice, the balance of equities tips decidedly in plaintiff's favor
18 and against defendants, and clearly a preliminary injunction is in the public
19 interest, because it always is in the public's interest to have constitutional and
20 lawful ordinances and to treat all citizens, both rich and poor, equally, and not
21 based on wealth or poverty.

22
23 In the Ninth Circuit, a party may obtain injunctive relief in the form of a
24 preliminary injunction by satisfying one of two, alternative tests.
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1 The traditional test requires that there be "(1) a strong likelihood⁴ of success
 2 on the merits [as here there is], (2) the likelihood of irreparable injury to plaintiff if
 3 the preliminary relief is not granted [as here there is], (3) a balance of hardships
 4 favoring the plaintiff, and (4) advancement of the public interest[.]" *Johnson v.*
 5 *California State Board of Accountancy*, 72 F.3d 1427, 1430 (9th Cir. 1995). The
 6 public interest is the most important factor, and it would be irreparably harmed
 7 were the subject ordinance to stand.

8 Under the so-called "alternative test," a party seeking injunctive relief must
 9 demonstrate either (1) a combination of probable success on the merits and the
 10 possibility of irreparable injury, *or* (2) that serious questions are raised and the
 11 balance of hardships tips sharply in the moving party's favor. *Stanley v. Univ. of*
 12 *Southern California*, 13 F.3d 1313, 1319 (9th Cir. 1994).

13 Taken as a whole, these requirements construct "a sliding scale in which the
 14 required degree of irreparable harm increases as the probability of success
 15 decreases." *MAI Systems Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 516 (9th Cir.
 16 1993) (citations and internal quotation marks omitted). Conversely, *mutatis*
 17 *mutandis*, and/or by *modus tollens*, as the probability of success increases the
 18 required degree of irreparable harm decreases. *See id.*

19 Under the test for injunctive relief, a moving party must show that there is a
 20 fair chance of success on the merits. *Stanley*, 13 F.3d at 1319, as here plaintiff has
 21 shown. Likewise, "[u]nder either formulation of the test, a party seeking an
 22 injunction must demonstrate that it will be exposed to some significant risk of
 23 irreparable injury." *Associated General Contractors v. Coalition for Economic*
 24 *Equity*, 950 F.2d 1401, 1410 (9th Cir. 1991).

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 26
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 28 ⁴ *Winter* did not change this standard, and it arguably reduced the "*strong*
 likelihood" standard to merely "likely to succeed on the merits." Plaintiff has met
 both standards.

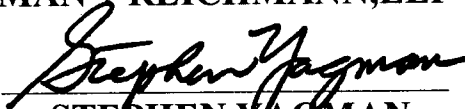
1 Defendants are acting and continue to act without any legal authority and
2 contrary to controlling legal authority, and continue to proceed with the posting
3 and enforcement of their parking violation signs.

4 Plaintiff has demonstrated that plaintiff is entitled to a preliminary
5 injunction.

6 **IV.**
7 **CONCLUSION**

8 For each and all of the reasons set forth, plaintiff should be granted
9 declaratory relief and a preliminary injunction, as set forth in the proposed order
10 that is lodged concurrently herewith.

11 Respectfully submitted,
12 **YAGMAN + REICHMANN,LLP**

13 By: 
14 **STEPHEN YAGMAN**

15 **YAGMAN + REICHMANN,LLP**

16 By: /s/ Joseph Reichmann
17 **JOSEPH REICHMANN**

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CERTIFICATE OF SERVICE

I, STEPHEN YAGMAN, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I served a copy of the foregoing motion, proposed order, and declaration on City of Los Angeles deputy City attorney Scott D. Marcus, Chief, Civil Litigation Branch, and with whom I held the L.R. 7-3 meeting in this action, by emailing it to him at scott.marcus@lacity.org. He is registered with the court's electronic filing system, and thus has agreed to accept electronic service of papers filed.


STEPHEN YAGMAN 08/16/21